Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

Appeal against Order No. 47 of 2003

Smt.Dhanuli Devi
W/o Lat Shri Bharat Ram,
R/o Village-Phali, Post Sainti,
Patwari Circle Ghat,
Tehsil and District-Chamoli.
……. Claimant/appellant

Versus

(1)Radha Krishan Bhatt
S/o Late Shri Srikrishna Bhatt,
R/o Upper Bazar, Karnprayag,
Tehsil Karnprayag, District Chamoli,
(Owner of Vehilce No1 UP-01/1137.
(2)National Insurance Company Ltd.
Regional Management through
Branch Manager, National Insurance
Company Ltd., Hardwar Road,
District-Dehradun. ……Opp.parties/Respondents.

Sri R.P.Nautiyal, learned counsel for the claimant/appellant,
Sri Lalit Belwal, learned counsel for the respondent No.2.

……

Dated: 25th Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the claimant/appellant for enhancement of the award against the judgment and order dated 22.01.2003 passed by Workmen's Compensation Commissioner, Chamoli in Case No. 04 of 2000-01, whereby the Workmen's Compensation Commissioner (*hereinafter referred to as the Commissioner*) allowed the case of the claimant for grant of Rs.

1,58,842.50 against the Opp.party No.2- National Insurance Company.

2- Brief facts giving rise to this appeal are that Bharat Ram alias Bharat Lal husband of the claimant/appellant was employed as deriver in Truck No. UP-01-1137 owned by Opp.party No.1-Radha Krishana Bhatt. The said vehicle met with an accident on 12.10.2000 at about 11.00 a.m. at 3 Kms. Ahead from Ghaat near Saitoli in which Bharat Ram alias Bharat Lal died. He was aged 28 years and was getting Rs. 4200/- per month as salary from the employer. The claimant filed the petition for compensation amounting to Rs. 5,00,000.00.

3- The opposite party contested the case and filed their written statements The copies of insurance policy, registration, permit and fitness certificate of offending vehicle were field before the Commissioner. The Commissioner after recording the evidence of the parties held that the accident took place on the aforesaid, dated, time and place in which deceased Bharat Ram died.

4- The learned counsel for the appellant challenged the order under appeal on the ground that the learned Commissioner has not appreciated the evidence which is corroborated by the Opp. Party No. 1 also that the deceased was getting salary of Rs. 4200/- per month, while it is proved from the evidence that the deceased was getting salary of Rs. 1500.00 per month at the time of accident and illegally and arbitrarily calculated the amount of compensation which is liable to be enhanced. We have gone through the entire material on record and have gone through the impugned judgment. The learned Commissioner recorded a finding that undisputedly the deceased was aged 28 years at the time of accident and also the learned counsel for the Insurance Company

himself contended that the owner of the offending vehicle used to pay Rs. 2,000/- per month to the deceased as driver while he was under his employment, though it was come in the evidence of the claimant/petitioner that the deceased was getting Rs. 4200/- per month. In view of aforesaid clear cut evidence and admission of the learned counsel for the Insurance Company, it appears the learned Commissioner erred in holding the income of the deceased Rs. 1500/- per month. We, therefore, hold that the income of the deceased was Rs. 2000/- per month at the time of accident and applying the provision of Schedule IV to Section 4 of the Workmen's Compensation act, 1923 the amount of compensation comes to 211.79X2000 divided by 2=Rs.2,11,790.00 which the claimant is entitled to get from the Insurance Company alongwith interest.

5- The appeal is partly allowed accordingly. The claimant/appellant shall be paid Rs. 2,11,790.00 (two lac eleven thousand seven hundred ninety) only instead of 1.58,842.50 as compensation by the Opp.party No.2-National Insurance Company alongwith interest at the rate of 9% (nine per cent) per annum from the date of filing of the petition till the date of actual payment.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh